

# ASSEMBLY, No. 3872

## STATE OF NEW JERSEY 218th LEGISLATURE

INTRODUCED MAY 7, 2018

**Sponsored by:**

**Assemblywoman YVONNE LOPEZ**

**District 19 (Middlesex)**

**Assemblyman THOMAS P. GIBLIN**

**District 34 (Essex and Passaic)**

**Assemblywoman CAROL A. MURPHY**

**District 7 (Burlington)**

**Co-Sponsored by:**

**Assemblywoman McKnight**

**SYNOPSIS**

Requires certain standards for professional and occupational boards considering applicants with criminal history records.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 1/16/2019)**

1 AN ACT concerning criminal history records and professional or  
2 occupational boards, and amending and supplementing P.L.1978,  
3 c.73.

4  
5 **BE IT ENACTED** by the Senate and General Assembly of the State  
6 of New Jersey:

7  
8 1. Section 8 of P.L.1978, c.73 (C.45:1-21) is amended to read  
9 as follows:

10 8. A board may refuse to admit a person to an examination or  
11 may refuse to issue or may suspend or revoke any certificate,  
12 registration or license issued by the board upon proof that the  
13 applicant or holder of such certificate, registration or license:

14 a. Has obtained a certificate, registration, license or  
15 authorization to sit for an examination, as the case may be, through  
16 fraud, deception, or misrepresentation;

17 b. Has engaged in the use or employment of dishonesty, fraud,  
18 deception, misrepresentation, false promise or false pretense;

19 c. Has engaged in gross negligence, gross malpractice or gross  
20 incompetence which damaged or endangered the life, health,  
21 welfare, safety or property of any person;

22 d. Has engaged in repeated acts of negligence, malpractice or  
23 incompetence;

24 e. Has engaged in professional or occupational misconduct as  
25 may be determined by the board;

26 f. Has been convicted of, or engaged in acts constituting, any  
27 crime or offense **【involving moral turpitude or】** relating  
28 **【adversely】** directly to the activity regulated by the board, except  
29 that a board, when considering whether crimes or offenses are  
30 directly related to the activity regulated by the board, shall consider  
31 convictions in a manner consistent with section 2 of  
32 P.L. , c. (C. ) (pending before the Legislature as this bill). For  
33 the **【purpose】** purposes of this subsection, and section 2 of  
34 P.L. , c. (C. ) (pending before the Legislature as this bill), a  
35 judgment of conviction or a plea of guilty, non vult, nolo  
36 contendere or any other such disposition of alleged criminal activity  
37 shall be deemed a conviction;

38 g. Has had his authority to engage in the activity regulated by  
39 the board revoked or suspended by any other state, agency or  
40 authority for reasons consistent with this section;

41 h. Has violated or failed to comply with the provisions of any  
42 act or regulation administered by the board;

43 i. Is incapable, for medical or any other good cause, of  
44 discharging the functions of a licensee in a manner consistent with  
45 the public's health, safety and welfare;

**EXPLANATION** – Matter enclosed in bold-faced brackets **【thus】** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 j. Has repeatedly failed to submit completed applications, or  
2 parts of, or documentation submitted in conjunction with, such  
3 applications, required to be filed with the Department of  
4 Environmental Protection;

5 k. Has violated any provision of P.L.1983, c.320 (C.17:33A-1  
6 et seq.) or any insurance fraud prevention law or act of another  
7 jurisdiction or has been adjudicated, in civil or administrative  
8 proceedings, of a violation of P.L.1983, c.320 (C.17:33A-1 et seq.)  
9 or has been subject to a final order, entered in civil or  
10 administrative proceedings, that imposed civil penalties under that  
11 act against the applicant or holder;

12 l. Is presently engaged in drug or alcohol use that is likely to  
13 impair the ability to practice the profession or occupation with  
14 reasonable skill and safety. For purposes of this subsection, the  
15 term "presently" means at this time or any time within the previous  
16 365 days;

17 m. Has prescribed or dispensed controlled dangerous substances  
18 indiscriminately or without good cause, or where the applicant or  
19 holder knew or should have known that the substances were to be  
20 used for unauthorized consumption or distribution;

21 n. Has permitted an unlicensed person or entity to perform an  
22 act for which a license or certificate of registration or certification  
23 is required by the board, or aided and abetted an unlicensed person  
24 or entity in performing such an act;

25 o. Advertised fraudulently in any manner.

26 The division is authorized, for purposes of facilitating  
27 determinations concerning licensure eligibility, to require the  
28 fingerprinting of each applicant in accordance with applicable State  
29 and federal laws, rules and regulations. Each applicant shall submit  
30 the applicant's name, address, and written consent to the director for  
31 a criminal history record background check to be performed. The  
32 division is authorized to receive criminal history record information  
33 from the State Bureau of Identification in the Division of State  
34 Police and the Federal Bureau of Investigation. Upon receipt of  
35 such notification, the division shall forward the information to the  
36 appropriate board which shall make a determination regarding the  
37 issuance of licensure. The applicant shall bear the cost for the  
38 criminal history record background check, including all costs of  
39 administering and processing the check, unless otherwise provided  
40 for by an individual enabling act. The Division of State Police shall  
41 promptly notify the division in the event an applicant or licensee,  
42 who was the subject of a criminal history record background check  
43 pursuant to this section, is convicted of a crime or offense in this  
44 State after the date the background check was performed.

45 For purposes of this act:

46 "Completed application" means the submission of all of the  
47 information designated on the checklist, adopted pursuant to section

1 1 of P.L.1991, c.421 (C.13:1D-101), for the class or category of  
2 permit for which application is made.

3 "Permit" has the same meaning as defined in section 1 of  
4 P.L.1991, c.421 (C.13:1D-101).  
5 (cf: P.L.2003, c.199, s.31)

6  
7 2. (New section) a. Notwithstanding any law, rule or  
8 regulation to the contrary, a board shall not disqualify a person from  
9 obtaining or holding any certificate, registration or license issued by  
10 a board solely because of a prior conviction of a crime, unless the  
11 crime directly relates to the profession or occupation regulated by  
12 the board. In determining if a prior conviction directly relates to the  
13 profession or occupation, a board shall consider the following:

14 (1) the nature and seriousness of the crime and the passage of  
15 time since its commission;

16 (2) the relationship of the crime to the purposes of regulating the  
17 profession or occupation regulated by the board;

18 (3) any evidence of rehabilitation of the person in the period of  
19 time following the prior conviction; and

20 (4) the relationship of the crime to the ability, capacity, and  
21 fitness required to perform the duties and discharge the  
22 responsibilities of the profession or occupation regulated by the  
23 board.

24 b. A board shall not disqualify a person from obtaining or  
25 holding a certificate, registration or license issued by the board  
26 because of a person's prior conviction of a crime unless it provides  
27 the person with a written notice that the board has determined that  
28 the conviction may disqualify the person, demonstrates the  
29 connection between the conviction and the profession or occupation  
30 regulated by the board, and affords the person an opportunity to be  
31 heard before the board prior to the board making a final decision on  
32 whether to disqualify the person. If, after the person is heard before  
33 the board, the person is disqualified for a certificate, registration or  
34 license, the board shall notify the person in writing of the  
35 following:

36 (1) the grounds and reasons for the denial or disqualification;

37 (2) the earliest date the person may reapply for the certificate,  
38 registration or license; and

39 (3) that evidence of rehabilitation may be considered upon  
40 reapplication.

41 c. If a person's prior conviction was for any sex offense that  
42 would qualify the person for registration pursuant to section 2 of  
43 P.L.1994, c.133 (C.2C:7-2) or under an equivalent statute of  
44 another state or jurisdiction, there shall be a rebuttable presumption  
45 that a direct relationship exists between the crime and the  
46 profession or occupation regulated by the board.



1 (4) the relationship of the crime to the ability, capacity, and  
2 fitness required to perform the duties and discharge the  
3 responsibilities of the profession or occupation regulated by the  
4 board.

5 The bill provides that a board may not disqualify a person from  
6 obtaining or holding a certificate, registration or license issued by  
7 the board because of a person's prior conviction of a crime unless it  
8 provides the person with a written notice that the board has  
9 determined that the conviction may disqualify the person,  
10 demonstrates the connection between the conviction and the  
11 profession or occupation regulated by the board, and affords the  
12 person an opportunity to be heard before the board prior to the  
13 board making a final decision on whether to disqualify the person.  
14 If the board's final decision is to disqualify the person, the board  
15 must notify the person in writing as to the grounds and reasons for  
16 the disqualification, the earliest date upon which the person may  
17 reapply, and that evidence of rehabilitation may be considered upon  
18 reapplication.

19 The bill also provides that a person's prior conviction for any sex  
20 offense that would qualify the person for registration under  
21 "Megan's Law," or under an equivalent statute of another state or  
22 jurisdiction, creates a rebuttable presumption that a direct  
23 relationship exists between the prior conviction and the profession  
24 or occupation regulated by the board.

25 Finally, the bill requires the division to obtain data concerning  
26 the number of, and reasons for, disqualification by any board  
27 pursuant to the provisions of the bill, and annually submit a report  
28 to the Legislature that provides the disqualification data for each  
29 board.